

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 3976 of 1987****For Approval and Signature:****HONOURABLE MR. JUSTICE K.A.PUJ**

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- ¹ Whether Reporters of Local Papers may be allowed to see the judgment ?
- ² To be referred to the Reporter or not ?
- ³ Whether their Lordships wish to see the fair copy of the judgment ?
- Whether this case involves a substantial question of law as to the
- ⁴ interpretation of the constitution of India, 1950 or any order made thereunder ?
- ⁵ Whether it is to be circulated to the civil judge ?

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JAYESHKUMAR D TAKODARA & 4 - Petitioner(s)**Versus****STATE OF GUJARAT & 5 - Respondent(s)**

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Appearance :

MR PM THAKKAR for Petitioner(s) :

MR L B DABHI, Ld.AGP for Respondent(s) : 1,

None for Respondent(s) : 2 - 6.

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CORAM : HONOURABLE MR. JUSTICE K.A.PUJ

Date : 25/01/2006

ORAL JUDGMENT

1. The petitioners, in all five, have filed this petition under Article 226 of the Constitution of India praying for quashing and setting aside the action of the respondent in not regularizing the services of the petitioners as Clerks and prayed further to quash and set aside the action of the respondents in treating the petitioners as Daily Wager Clerks and further prayed to quash and set aside the action of the respondents in not granting the petitioners Equal Pay For Equal Work. The petitioners have also prayed for the direction to the respondents to absorb the petitioners in the permanent establishment and also to pay equal pay as permanent employees from the date of petitioners' initial joining the services of the respondents. The petitioners have further prayed for direction to the respondents to permit the petitioners to discharge their duties and to pay to the petitioners with effect from the date of institution of this petition the salary as per the time-scale of the permanent employees for the same

job and in the alternative to direct the petitioners to pay same quantum of monthly emoluments which a regularly appointed clerk would get doing the same job.

2. It is the case of the petitioners that the petitioners were working under the respondents as daily wage Clerks for the last many years. Though nature of work carried out by the petitioners was equivalent to that of regularly appointed clerks, the petitioners were not getting the same scale of pay that was being paid to the regular employees similarly situated like the petitioners. It is further stated that the petitioners were working under the establishment of respondents for more than 5 years and they were discharging their duties like permanent employees of the respondents. It is further submitted that though the petitioners were rendering the services of same nature, the respondents were denying the benefits which were available to the permanent employees for the reasons best known to them. It is further submitted that though the petitioners have discharged

continuous service for more than 5 years, the petitioners were compelled to work as daily wagers at the rate of Rs.17.85 per day(in case of petitioner No.1- Rs.14/-). It is further submitted that the intention of the respondents was to keep the petitioners on the list of daily wagers for all the time to come so as to conveniently shirk away from their liability to absorb the petitioners as permanent employees. It is further submitted that the respondents should have absorbed the petitioners on permanent basis by regularizing their services as per Government Resolution dated 4th July, 1973. It is further submitted that the action of the respondents in not regularizing the services of the petitioners was arbitrary, illegal, unjustified, unconstitutional and against the principles of natural justice. It is further submitted that the respondents have acted in an arbitrary and illegal manner so as to confirm the juniors to the petitioners on workcharge establishment by their order dated 31st December, 1985 in total disregard of the rights of the petitioners. It is further submitted that for

instance one Ratilal Gulabchand and Smt.Pushpaben Gagjibhai Chauhan have been absorbed in the work charge set up by superseding the petitioners. It is further submitted that the said action of the respondents was ipso facto arbitrary, illegal and against the principles of natural justice.

3. The petitioner has also relied upon the decision of this Court rendered in SCA No.942 of 1986 on 10th March, 1986 wherein this court has directed the respondents by way of an interim relief to pay to the petitioner, from the date of institution of the said petition, salary according to the time scale of permanent employee for the same job. The court has also made it clear that if the petitioner at present could not technically be given time scale , he should at least be given the same quantum of money which a regular employee would get doing the same job.

4. Petitioner further relied upon the order of this Court in SCA 2352 of 1986 passed on 28.04.1986 granting ad-interim relief in terms of Para 12(D)

whereby the respondents were directed to pay to the petitioners, with effect from the date of the institution of the said petition, salary, according to the time scale of the permanent employees, for the same job and in the alternative, to pay the same quantum of monthly emoluments, which a regularly appointed Road Clerk would get, doing the same job. It is further submitted that the present petitioner should also be given the same benefits on the basis of benefits given, under Article 14 of the Constitution of India.

5. The relief as prayed for in the present petition, was opposed by learned AGP Mr.L. B. Dabhi appearing for the respondent. He has submitted that directions issued by this Court to the respondents were not just and proper. In support of his submission, he has relied upon the decision of this Court in the case of State of U.P. And Others Vs. Ajay Kumar 1997 (4) SCC 88 wherein it is held that there must exist a post and either administrative instructions or statutory rules must be in operation to appoint a person to the post. Daily-

wage appointment will obviously be in relation to contingent establishment in which there cannot exist any post and it continues so long as the work exists. The Court therefore held that Division Bench of the High Court was clearly in error in directing the appellant to regularize the service of the respondent, who was working as Nursing Orderly on daily wages, to the post as and when the vacancy arises and to continue him until then.

6. Mr.Dabhi has further relied upon the decision in the case of Union of India Vs. Bishamber Dutt reported at (1997) 119 SLR 135, wherein the Court has taken the view that since they are not appointed on regular basis in accordance with rules the direction issued by the Tribunal to regularise the service is obviously illegal. The contention raised by the learned counsel for the respondents that in view of the fact that they were regularly working for a long time they are entitled to be regularized, was also rejected.

7. Mr.Dabhi has further relied upon the decision in

the case of State of Haryana and Anr. Vs. Tilak Raj and Ors. reported at (2003) 6 SCC 123, wherein the respondent daily wagers filed writ petition in the High Court claiming that they were entitled to regularisation in view of long period of service put in by them and/or they should be paid the same salary as paid to regular employees since the nature of work done by them was similar. In other words, for the second relief claimed, the principle of "equal pay for equal work" was pressed into service. The petition was allowed by the High Court and though the petitioners were not granted the regular pay scale which their regular counterparts were receiving, they were held entitled to minimum of the pay scale with dearness allowance. On appeal being filed, while setting aside the judgment of the High Court, the Supreme Court held that the principle of "equal pay for equal work" is not always easy to apply. There are inherent difficulties in comparing and evaluating the work done by different persons in different organizations, or even in the same organization. It is a concept which requires for its applicability

complete and wholesale identity between a group of employees claiming identical pay scales and the other group of employees who have already earned such pay scales. The problem about equal pay cannot always be translated into a mathematical formula.

The Court further held that:

“ A scale of pay is attached to a definite post and in case of a daily-wager, he holds no posts. The respondent workers cannot be held to hold any posts to claim even any comparison with the regular and permanent staff for any or all purposes including a claim for equal pay and allowances. To claim a relief on the basis of equality, it is for the claimants to substantiate a clear-cut basis of equivalence and a resultant hostile discrimination before becoming eligible to claim right on a par with the other group vis-a-vis an alleged discrimination.

8. Mr. L.B.Dabhi has further relied upon the decision in the case of Utkal University Vs.Jyotirmayee Nayak reported at (2003) 4 SCC 760

wherein it is held that in the absence of any appointment order appointing the respondents on regular pay scale, the respondents were not entitled to any regular pay scale as was admissible to the similarly placed employees of the University. It is further held that one sentence in the office order that the respondents could "draw their salary accordingly as per rules" cannot give any right to them. The sentence cannot be read in isolation so as to give them right.

9. Mr.L.B.Dabhi, learned AGP further submitted that looking to the facts of the present case, the petitioners were engaged on nominal muster roll and they were paid on daily wages basis. He has further submitted that as per the Resolution dated 17.10.1988 with effect from 1st October, 1988 the petitioners were taken as permanent daily wages employees and were paid the pay and allowances applicable to them. He has further submitted that they were also taken up with effect from 1.5.1991 as per the Government Resolution dated 30th October, 1991 and they were paid the pay and allowance

applicable to them. He has further submitted that all these petitioners were granted benefits such as Earned leave, Medical leave etc. and they were given pension and gratuity. The provident fund facility was also given to the permanent daily wagger employees. He has further submitted that petitioner nos. 1 to 3 were taken up on work charge establishment as per G.R. Dated 2/10.11.1997. It is further stated that none of the petitioners services were terminated till the date and apprehension expressed in the petition was ill-founded. He has also submitted that the petitioners were paid the pay and allowances equivalent to a permanent clerk/employees as applicable, with effect from 1.10.88 and for the SSC passed permanent daily wages clerks as per G.R. dated 30.10.91. It is lastly submitted that all the petitioners were now permanent daily wage clerks or work-charged clerks and all the daily wages employees were taken up on permanent daily wages establishment and workcharge establishment as per seniority maintained and hence, there is no question of juniors having been appointed in work

charge employees.

10. Based on this affidavit in reply, Mr.Dabhi has submitted that grievance raised by the petitioners in this petitioner no longer survive and the petition must be disposed of accordingly.

11. After having heard the learned advocate appearing for the respective parties and after having gone through the petition as well as affidavit in reply and authorities cited before the Court the Court is of the view that petitioners cannot claim, as a matter of right, the regularisation of their posts of daily wagers in view of the law laid down by the Hon'ble Supreme Court. However, in the present case, affidavit in reply filed on behalf of the respondents makes it abundantly clear that the petitioners were given all the benefits and they have been taken up on permanent daily wages clerks and work charge clerks respectively and they have been given all the benefits which are given to the regular employees. Considering this aspect of the matter, the Court is

of the view that grievance of the petitioners by and large is redressed. The petition is therefore disposed of accordingly subject to reserving the liberty to the petitioners that in case of difficulty and if need so arises in future the petitioners can move to this Court again.

12. With the aforesaid direction and observation, the petition is accordingly disposed of. Rule is made absolute to the above extent without any order as to costs.

(K.A.PUJ, J.)

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